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September 16, 1999

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S. W.  
TW-A325  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY


Re: Implementation of Sections 309(j) and  
337 of the Communications Act of 1934 as Amended  
WT Docket No. 99-87 - RM 9332

Dear Ms. Salas:

Transmitted herewith, on behalf of Mark IV Industries Ltd., by its attorneys, are an original and four copies of its Reply Comments in the above-captioned matter.

In the event there are any questions or comments concerning this matter, please direct them to the undersigned.

Very truly yours,

  
George Y. Wheeler

Enclosures

cc(w/encl.) See Attached Service List

# ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
Implementation of Sections 309(j) and )  
337 of the Communications Act of 1934 )  
as Amended )  
)  
Promotion of Spectrum Efficient )  
Technologies on Certain Part 90 )  
Frequencies )  
)  
Establishment of Public Service Radio )  
Pool in the Private Mobile Frequencies )  
Below 800 MHZ )

WT Dkt. No. 99-87

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RM-9332

REPLY COMMENTS OF  
MARK IV INDUSTRIES, LIMITED, I.V.H.S. DIVISION

Mark IV Industries, Limited, I.V.H.S. Division ("Mark IV") herewith, by its attorneys, files its reply comments as provided in the Commission's Notice of Proposed Rulemaking (FCC 99-52) released March 25, 1999 in ET Docket No. 99-87 ("NPRM") with regard to the implementation of Sections 309(j) and 337 of the Communications Act of 1934, ("Communications Act")<sup>1</sup> as amended by the Balanced Budget Act of 1997.<sup>2</sup>

Mark IV strongly supports the comments of the U.S. Department of Transportation, the International Bridge, Tunnel and Turnpike Association ("IBTTA") and the numerous governmental and quasi-governmental authorities requesting retention of the existing shared use licensing for the non-multilateration portions of the Location and Monitoring Service ("LMS") band, 902-904 MHZ and 909-921 MHZ. These authorities include: Maryland Transportation Authority; MTA Bridges

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<sup>1</sup> 47 USC § 309(j) and 47 USC § 337.

<sup>2</sup> Pub.L.No. 105-33, Title III, 111 Stat. 251 (1997).

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and Tunnels; New Jersey Highway Authority; New Jersey Turnpike Authority; New York State Thruway Authority; Peace Bridge Authority; South Jersey Transportation Authority; Transcom and West Virginia Parkways Economic Development and Tourism Authority.

The comments of the foregoing authorities document the numerous public benefits which have been achieved under the shared use licensing of non-multilateration LMS spectrum for intelligent transportation systems, including improved operational efficiency and enhanced user satisfaction and safety, increased traffic capacity on existing and new roads, bridges and tunnels, improved traffic flow, enhanced public safety, air quality improvements and reduced operational costs of toll systems. These public benefits as well as the legitimate expectations of these public toll authorities, including the members of the E-Z Pass<sup>SM</sup> Interagency Group (“IAG”), as LMS licensees, the statutory obligations under Section 309(j)(6) of the Communications Act to avoid mutual exclusivity, the exemptions from competitive bidding under Section 309(j)(2) of the Communications Act for the internal radio services used by governmental entities and the need to avoid the inherent limitations of the competitive bidding process are ample justification and statutory authority for the Commission to find that shared use licensing should be retained for non-multilateration LMS services of these public entities.

Mark IV also shares the concerns expressed by the U.S. Department of Transportation,<sup>3</sup> the IBTTA<sup>4</sup> and others<sup>5</sup> that adoption of auction selection for non-multilateration LMS spectrum will

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<sup>3</sup> U.S. Department of Transportation Comments, p. 4.

<sup>4</sup> IBTTA Comments, pp. 3-4.

<sup>5</sup> MTA Bridges and Tunnels Comments, p. 4; Maryland Transportation Authority  
(continued...)

jeopardize the ability of public toll authorities to meet their responsibilities and will not serve the public interest. The overlay licensee or band manager approaches described in the Commission's NPRM do not avoid the limitations and disadvantages inherent under the auction procedures to which public entities such as the IAG members would be exposed.<sup>6</sup> The Commission's proposals in this regard undermine congressionally mandated exemptions for public safety services from spectrum auctions under Section 309(j)(2) of the Communications Act and related obligations under Section 309(j)(6)(E) of the Communications Act to avoid mutual exclusivity. To the extent the Commission anticipates an overlay licensee or band manager would take over assignment of spectrum and management of interference cases, legitimate concerns have been raised that overlay licensees and band managers will not provide these functions in a "timely, affordable and reliable manner."<sup>7</sup> There are even issues about potential "anticompetitive behavior," the influence of profit motives and regulatory uncertainty regarding the interference protection to be enforced by private entities.<sup>8</sup> American Petroleum Institute also raises issues regarding possible "conflicts of interest" if, for example, an equipment manufacturer acquired licenses as a band manager.<sup>9</sup>

The Commission need not address the serious issues raised by numerous commentators

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<sup>5</sup>(...continued)

Comments, pp. 4-5; New Jersey Highway Authority Comments, p. 3; New Jersey Turnpike Authority comments, pp. 3-4; New York State Thruway Authority Comments, pp. 3-4; Peace Bridge Authority Comments, p. 3; South Jersey Transportation Authority Comments, p. 2; and West Virginia Parkways Economic Development and Tourism Comments, p. 3.

<sup>6</sup> See Mark IV Comments, pp. 13-15.

<sup>7</sup> Private Internal Radio Service Coalition Comments, p. 18.

<sup>8</sup> United Telecom Council Comments, pp. 40-41.

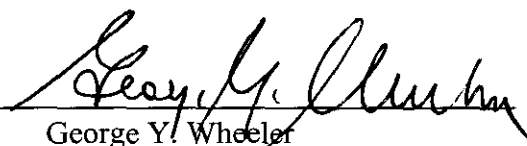
<sup>9</sup> American Petroleum Institute Comments, p. 17.

regarding its overlay licensee and band manager proposals as they might apply to the non-multilateration LMS spectrum. Reliance on auction selection is unnecessary because shared use licensing has fostered the rapid, widespread, spectrum efficient and cost-effective deployment of intelligent transportation services. Preservation of shared use licensing is needed to support continued development of the integrated networks providing intelligent transportation services such as those being developed by the IAG member toll agencies. The record of rapid and widespread deployment of advanced intelligent transportation services in this proceeding provides ample justification for continued reliance on current shared use licensing procedures for non-multilateration LMS spectrum.

Respectfully submitted,

MARK IV INDUSTRIES, LIMITED, I.V.H.S. DIVISION

September 16, 1999

By   
George Y. Wheeler

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Its Attorneys

## Service List

Aeronautical Radio, Inc.	International Communications Association
Alan Densham	International Association of Fire Chiefs, Inc.,
Allen Crawford	et al.
Alliant Energy - Larry Plotzke	Jack Campitelli
American Automobile Association	Jerry G. Young
American Electric Power Service Corporation	Jim Sequeira, Director, Department of Utilities,
American Mobile Telecommunications Assn.	City of San Francisco
American Petroleum Institute	Joseph T. Wehrkamp
American Water Works Assn.	Kansas City, Missouri Water Services
Amtech Systems Division of Internec	Kay Communications, Inc.
Technologies Corporation	Kenwood Communications Corporation
Arizona Public Service Company	Land Mobile Communications Council
Assn. of Public-Safety Communications	Land Mobile Communications Council
Officials-International, Inc.	Lincoln Water System
Association of American Railroads	Lubrizol Corporation
Auctions and Industry Analysis Division	Maryland Transportation Authority
Baltimore Gas and Electric Company	Minnesota Power, Inc.
Barbara Wilson APW Electronics, Inc.	Motorola
Blooston, Mordkofsky, Jackson & Dickens	MRFAC, Inc.
Boeing Company	MTA Bridges and Tunnels
Cellnet Data Systems, Inc.	NAWC
Cellnet Data Systems, Inc.	New Jersey Turnpike Authority
Central and South West Corporation	New York State Thruway Authority
Central Station Alarm Assn.	New Jersey Highway Authority
Chadmoore Wireless Group, Inc.	Nextel Communications, Inc.
Cinergy Corporation	North Marin Water District
City of Calhoun, GA	North Texas Communications Council
City of Lincoln Water System	NYSTEC
Commonwealth Edison Company	Office of Advocacy, U.S. Small Business
Council of Independent Communication	Administration
Suppliers	Peace Bridge Authority
Critical Infrastructure Industries	Personal Communications Industry Association
David R. Land	Private Internal Radio Service Coalition
Dixie Ten Broeck	Radscan, Inc.
Entergy Services, Inc.	Ray's Radio Shop, Inc.
Ford Communications, Inc.	Rees Communications
Forest Industries Telecommunications	San Francisco Public Utilities Commission
Henry Radio, Inc.	Scana Corporation
Hewlett-Packard Company	Small Business in Telecommunications
Industrial Telecommunications Association, Inc.	South Jersey Transportation Authority
International Bridge, Tunnel & Turnpike	Taxicab and Livery Communications Council
Association	

Telephone Maintenance Frequency Advisory  
Committee  
Texas Section American Water Works Assn.  
The Private Internal Radio Service Coalition  
The Boeing Company  
Thomas C. Smith  
Transcom  
Trimble Navigation Limited  
U.S. Department of Transportation  
Union Electric Company d/b/a  
Ameren UE, et al.  
United Telecom Council  
United Water Idaho  
United Water Resources  
USMSS, Inc.  
UTC, The Telecommunications Association  
West Virginia Parkway Economic Development  
and Tourism Authority  
Western Communications, Inc.  
William A. Anderson  
Winstar Communications, Inc.  
Wisconsin Dept. of Transportation  
Wisconsin Public Service Commission